

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1700

Introduced by Assembly Member Medina

February 13, 2014

An act to amend Sections 1923.2 and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1700, as amended, Medina. Reverse mortgages: notifications.

Existing state and federal law regulate the activities of financial institutions. Existing state law regulates reverse mortgage loans and requires a lender to refer a prospective borrower to a housing counseling agency, as specified, and prohibits a lender from accepting a final and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower has received loan counseling. Existing law prohibits a lender from taking a reverse mortgage application before having provided an applicant a specified disclosure notice and written checklist.

This bill would prohibit a lender from taking a reverse mortgage application or assessing any fees until seven days from the date of loan counseling, as specified. The bill would make specified changes to the disclosure notice. The bill would delete the requirement that the lender provide a written checklist and would, instead, prohibit a lender from taking a reverse mortgage application unless the applicant has received from the lender a specified reverse mortgage worksheet guide. The bill would require that the worksheet *guide* contain certain issues that the borrower is advised to consider and discuss with the counselor. The bill

would require the counselor and the prospective borrower to sign the worksheet *guide*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) A reverse mortgage is a loan that allows a
2 homeowner to convert home equity into tax-free cash payments.
3 More than 90 percent of all reverse mortgages are obtained through
4 the Home Equity Conversion Mortgage (HECM) program
5 sponsored by the United States Department of Housing and Urban
6 Development. Many senior citizens use reverse mortgage payments
7 to supplement retirement income or pay medical expenses.
8 Although the HECM program has been in existence since 1989,
9 the program has seen rapid growth only in the past few years. As
10 the population ages, this growth rate is expected to accelerate. The
11 growth rate is also expected to increase as sales agents and lenders
12 turn from the declining subprime and conventional mortgage
13 market to the rapidly growing market for reverse mortgages.

14 (b) Because reverse mortgage decisionmaking involves a number
15 of complex issues, before committing to a loan every senior should
16 contemplate possible negative consequences. Every prospective
17 purchaser of a reverse mortgage should study and discuss with an
18 HUD-approved reverse mortgage counselor the items in the reverse
19 mortgage worksheet guide specified in subdivision (b) of Section
20 1923.5 of the Civil Code.

21 (c) In specifying these requirements, it is not the intent of the
22 Legislature to discourage the use of reverse mortgages, which
23 ~~often can~~ provide substantial benefits to senior citizens. Rather,
24 these requirements seek to ensure that senior citizens will make
25 informed decisions and that persons who offer, sell, or arrange the
26 sale of reverse mortgages to senior citizens will act in the best
27 interest of reverse mortgage loan borrowers.

28 SEC. 2. Section 1923.2 of the Civil Code is amended to read:
29 1923.2. A reverse mortgage loan shall comply with all of the
30 following requirements:

31 (a) Prepayment, in whole or in part, shall be permitted without
32 penalty at any time during the term of the reverse mortgage loan.
33 For the purposes of this section, penalty does not include any fees,

1 payments, or other charges that would have otherwise been due
2 upon the reverse mortgage being due and payable.

3 (b) A reverse mortgage loan may provide for a fixed or
4 adjustable interest rate or combination thereof, including compound
5 interest, and may also provide for interest that is contingent on the
6 value of the property upon execution of the loan or at maturity, or
7 on changes in value between closing and maturity.

8 (c) A reverse mortgage may include costs and fees that are
9 charged by the lender, or the lender's designee, originator, or
10 servicer, including costs and fees charged upon execution of the
11 loan, on a periodic basis, or upon maturity.

12 (d) If a reverse mortgage loan provides for periodic advances
13 to a borrower, these advances shall not be reduced in amount or
14 number based on any adjustment in the interest rate.

15 (e) A lender who fails to make loan advances as required in the
16 loan documents, and fails to cure an actual default after notice as
17 specified in the loan documents, shall forfeit to the borrower treble
18 the amount wrongfully withheld plus interest at the legal rate.

19 (f) The reverse mortgage loan may become due and payable
20 upon the occurrence of any one of the following events:

21 (1) The home securing the loan is sold or title to the home is
22 otherwise transferred.

23 (2) All borrowers cease occupying the home as a principal
24 residence, except as provided in subdivision (g).

25 (3) Any fixed maturity date agreed to by the lender and the
26 borrower occurs.

27 (4) An event occurs which is specified in the loan documents
28 and which jeopardizes the lender's security.

29 (g) Repayment of the reverse mortgage loan shall be subject to
30 the following additional conditions:

31 (1) Temporary absences from the home not exceeding 60
32 consecutive days shall not cause the mortgage to become due and
33 payable.

34 (2) Extended absences from the home exceeding 60 consecutive
35 days, but less than one year, shall not cause the mortgage to become
36 due and payable if the borrower has taken prior action which
37 secures and protects the home in a manner satisfactory to the
38 lender, as specified in the loan documents.

39 (3) The lender's right to collect reverse mortgage loan proceeds
40 shall be subject to the applicable statute of limitations for written

1 loan contracts. Notwithstanding any other provision of law, the
2 statute of limitations shall commence on the date that the reverse
3 mortgage loan becomes due and payable as provided in the loan
4 agreement.

5 (4) The lender shall prominently disclose in the loan agreement
6 any interest rate or other fees to be charged during the period that
7 commences on the date that the reverse mortgage loan becomes
8 due and payable, and that ends when repayment in full is made.

9 (h) The first page of any deed of trust securing a reverse
10 mortgage loan shall contain the following statement in 10-point
11 boldface type: "This deed of trust secures a reverse mortgage loan."

12 (i) A lender or any other person that participates in the
13 origination of the mortgage shall not require an applicant for a
14 reverse mortgage to purchase an annuity as a condition of obtaining
15 a reverse mortgage loan.

16 (1) The lender or any other person that participates in the
17 origination of the mortgage shall not do either of the following:

18 (A) Participate in, be associated with, or employ any party that
19 participates in or is associated with any other financial or insurance
20 activity, unless the lender maintains procedural safeguards designed
21 to ensure that individuals participating in the origination of the
22 mortgage shall have no involvement with, or incentive to provide
23 the prospective borrower with, any other financial or insurance
24 product.

25 (B) Refer the borrower to anyone for the purchase of an annuity
26 or other financial or insurance product prior to the closing of the
27 reverse mortgage or before the expiration of the right of the
28 borrower to rescind the reverse mortgage agreement.

29 (2) This subdivision does not prevent a lender from offering or
30 referring borrowers for title insurance, hazard, flood, or other peril
31 insurance, or other similar products that are customary and normal
32 under a reverse mortgage loan.

33 (3) A lender or any other person who participates in the
34 origination of a reverse mortgage loan to which this subdivision
35 would apply, and who complies with paragraph (1) of subsection
36 (n), and with subsection (o), of Section 1715z-20 of Title 12 of
37 the United States Code, and any regulations and guidance
38 promulgated under that section, as amended from time to time, in
39 offering the loan, regardless of whether the loan is originated
40 pursuant to the program authorized under Section 1715z-20 of

1 Title 12 of the United States Code, and any regulations and
2 guidance promulgated under that section, shall be deemed to have
3 complied with this subdivision.

4 (j) Prior to accepting a final and complete application for a
5 reverse mortgage the lender shall provide the borrower with a list
6 of not fewer than 10 counseling agencies that are approved by the
7 United States Department of Housing and Urban Development to
8 engage in reverse mortgage counseling as provided in Subpart B
9 of Part 214 of Title 24 of the Code of Federal Regulation. The
10 counseling agency shall not receive any compensation, either
11 directly or indirectly, from the lender or from any other person or
12 entity involved in originating or servicing the mortgage or the sale
13 of annuities, investments, long-term care insurance, or any other
14 type of financial or insurance product. This subdivision does not
15 prevent a counseling agency from receiving financial assistance
16 that is unrelated to the offering or selling of a reverse mortgage
17 loan and that is provided by the lender as part of charitable or
18 philanthropic activities.

19 (k) A lender shall not accept a final and complete application
20 for a reverse mortgage loan from a prospective applicant or assess
21 any fees upon a prospective applicant until the elapse of seven
22 days from the date of counseling, as evidenced by the counseling
23 certification, and without first receiving certification from the
24 applicant or the applicant's authorized representative that the
25 applicant has received counseling from an agency as described in
26 subdivision (j) and that the counseling was conducted in person,
27 unless the certification specifies that the applicant elected to receive
28 the counseling in a manner other than in person. The certification
29 shall be signed by the borrower and the agency counselor, and
30 shall include the date of the counseling and the name, address, and
31 telephone number of both the counselor and the applicant.
32 Electronic facsimile copy of the housing counseling certification
33 satisfies the requirements of this subdivision. The lender shall
34 maintain the certification in an accurate, reproducible, and
35 accessible format for the term of the reverse mortgage.

36 (l) A lender shall not make a reverse mortgage loan without
37 first complying with, or in the case of brokered loans ensuring
38 compliance with, the requirements of Section 1632, if applicable.

39 SEC. 3. Section 1923.5 of the Civil Code is amended to read:

1 1923.5. (a) No reverse mortgage loan application shall be
2 taken by a lender unless the loan applicant, prior to receiving
3 counseling, has received from the lender the following plain
4 language statement in conspicuous 16-point type or larger, advising
5 the prospective borrower about counseling prior to obtaining the
6 reverse mortgage loan:

7
8 **IMPORTANT NOTICE**
9 **TO REVERSE MORTGAGE LOAN APPLICANT**
10

11 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
12 TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE
13 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
14 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
15 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
16 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
17 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT
18 ON YOUR—~~IMMEDIATE~~ FUTURE NEEDS. BEFORE
19 ENTERING INTO THIS TRANSACTION, YOU ARE
20 REQUIRED TO CONSULT WITH AN INDEPENDENT
21 REVERSE MORTGAGE LOAN COUNSELOR TO DISCUSS
22 WHETHER OR NOT A REVERSE MORTGAGE IS SUITABLE
23 FOR YOU. A LIST OF APPROVED COUNSELORS WILL BE
24 PROVIDED TO YOU BY THE LENDER.

25 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
26 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
27 PURCHASE AN ANNUITY OR RELATED FINANCIAL
28 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
29 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS
30 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
31 YOUR COUNSELOR AND FAMILY MEMBERS.
32

33 (b) (1) In addition to the plain statement notice described in
34 subdivision (a), no reverse mortgage loan application shall be taken
35 by a lender unless the lender provides the prospective borrower,
36 prior to his or her meeting with a counseling agency on reverse
37 mortgages, with a reverse mortgage worksheet guide, or in the
38 event that the prospective borrower seeks counseling prior to
39 requesting a reverse mortgage loan application from the reverse
40 mortgage lender, the counseling agency shall provide the

1 prospective borrower with a written checklist reverse mortgage
2 worksheet guide. Thereverse *the following plain language reverse*
3 mortgage worksheet guide shall conspicuously alert the prospective
4 borrower, in 12-point, *in 14-point* type or larger, that he or she
5 should discuss with the agency counselor the following issues
6 larger:

7 (A) How unexpected medical or other events that cause the
8 prospective borrower to move out of the home, either permanently
9 or for more than one year, earlier than anticipated will impact the
10 total annual loan cost of the mortgage.

11 (B) The extent to which the prospective borrower's financial
12 needs would be better met by options other than a reverse
13 mortgage, including, but not limited to, less costly home equity
14 lines of credit, property tax deferral programs, or governmental
15 aid programs.

16 (C) Whether the prospective borrower intends to use the
17 proceeds of the reverse mortgage to purchase an annuity or other
18 insurance products and the consequences of doing so.

19 (D) The effect of repayment of the loan on nonborrowing
20 residents of the home after all borrowers have died or permanently
21 left that a 12-consecutive month absence by the borrower will
22 cause the reverse mortgage loan to become due.

23 (E) Reverse mortgages require three continuous obligations of
24 the borrower: maintenance and repair of the home, payment of
25 property taxes, and payment of property insurance premiums. A
26 failure to do any of these things could lead to default on the reverse
27 mortgage.

28 (F) The impact that the reverse mortgage may have on the
29 prospective borrower's tax obligations, eligibility for government
30 assistance programs, and the effect that losing equity in the home
31 will have on the borrower's estate and heirs.

32 (G) The ability of the borrower to finance alternative living
33 accommodations, such as assisted living or long-term care nursing
34 home registry, after the borrower's equity is depleted.

35 (H) That a reverse mortgage is a compounding loan and that
36 the debt may accelerate over time.

37 (I) The risks associated with using the proceeds of a reverse
38 mortgage to purchase investment products.

39 *Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage*
40 *Right for Me?*

1 *To decide if a recommended purchase of a reverse mortgage is*
2 *right for you, consider all of your goals, needs, and available*
3 *options. This self-evaluation worksheet has five essential questions*
4 *for you to consider when deciding if a reverse mortgage is right*
5 *for you.*

6 *Directions: The State of California advises you to carefully read*
7 *and complete this worksheet, and bring it with you to your*
8 *counseling session. You may make notes on a separate piece of*
9 *paper with questions you may have about whether a reverse*
10 *mortgage is right for you. During the counseling session, you can*
11 *speak openly and confidentially with a professional reverse*
12 *mortgage counselor, independent of the lender, whose only job is*
13 *to help you understand what it means for you to become involved*
14 *with this particular loan.*

15 1. *What happens to others in your home after you die or move*
16 *out?*

17 *Rule: When the borrower dies, moves, or is absent from the home*
18 *for 12 consecutive months, the loan becomes due.*

19 *Considerations: Having a reverse mortgage affects the future*
20 *of all those living with you. If the loan cannot be paid off, then the*
21 *home will have to be sold in order to satisfy the lender. To*
22 *determine if this is an issue for you, ask yourself:*

23 (A) *Who is currently living in the home with you?*

24 (B) *What will they do when you die or permanently move from*
25 *the home?*

26 (C) *Have you discussed this with all those living with you or*
27 *any family members?*

28 (D) *Who will pay off the loan, and have you discussed this with*
29 *them?*

30 (E) *If your heirs do not have enough money to pay off the loan,*
31 *the home will pass into foreclosure.*

32 *Do you need to discuss this with your counselor? Yes or No*

33 2. *Do you know that you can default on a reverse mortgage?*

34 *Rule: There are three continuous financial obligations. If you*
35 *fail to keep up with your insurance, property taxes, and home*
36 *maintenance, you will go into default. Uncured defaults lead to*
37 *foreclosures.*

38 *Considerations: Will you have adequate resources and income*
39 *to support your financial needs and obligations once you have*

1 *removed all of your available equity with a reverse mortgage? To*
2 *determine if this is an issue for you, ask yourself:*

3 *(A) Are you contemplating a lump-sum withdrawal?*

4 *(B) What other resources will you have once you have reached*
5 *your equity withdrawal limit?*

6 *(C) Will you have funds to pay for unexpected medical expenses?*

7 *(D) Will you have the ability to finance alternative living*
8 *accommodations, such as independent living, assisted living, or a*
9 *long-term care nursing home?*

10 *(E) Will you have the ability to finance routine or catastrophic*
11 *home repairs, especially if maintenance is a factor that may*
12 *determine when the mortgage becomes payable?*

13 *Do you need to discuss this with your counselor? Yes or No*

14 *3. Have you fully explored other options?*

15 *Rule: Less costly options may exist.*

16 *Consideration: Reverse mortgages are compounding loans, and*
17 *the debt to the lender accelerates as time goes on. You may want*
18 *to consider using less expensive alternatives or other assets you*
19 *may have before you commit to a reverse mortgage. To determine*
20 *if this is an issue for you, consider:*

21 *(A) Alternative financial options for seniors may include, but*
22 *not be limited to, less costly home equity lines of credit, property*
23 *tax deferral programs, or governmental aid programs.*

24 *(B) 2. Other types of lending arrangements may be available*
25 *and less costly. You may be able to use your home equity to secure*
26 *loans from family members, friends, or would-be heirs.*

27 *Do you need to discuss this with your counselor? Yes or No*

28 *4. Are you intending to use the reverse mortgage to purchase a*
29 *financial product?*

30 *Rule: Reverse mortgages are interest-accruing loans.*

31 *Considerations: Due to the high cost and accelerating debt*
32 *incurred by reverse mortgages, using home equity to finance*
33 *investments is not suitable in most instances. To determine if this*
34 *is an issue for you, consider:*

35 *(A) The cost of the reverse mortgage loan may exceed any*
36 *financial gain from any product purchased.*

37 *(B) Will the financial product you are considering freeze or*
38 *otherwise tie up your money?*

1 (C) There may be high surrender fees, service charges, or
2 undisclosed costs on the financial products purchased with the
3 proceeds of a reverse mortgage.

4 (D) Has the sales agent offering the financial product discussed
5 suitability with you?

6 (E) Has the agent given you a written suitability evaluation?

7 Do you need to discuss this with your counselor? Yes or No

8 5. Do you know that a reverse mortgage may impact your
9 eligibility for government assistance programs?

10 Rule: Income received from investments will count against
11 individuals seeking government assistance.

12 Considerations: Converting your home equity into investments
13 may create nonexempt asset statuses. To determine if this is an
14 issue for you, consider:

15 (A) There are state and federal taxes on the income investments
16 financed through home equity.

17 (B) If you go into a nursing home for an extended period of
18 time, the reverse mortgage loan will become due, the home may
19 be sold, and any proceeds from the sale of the home may make
20 you ineligible for government benefits.

21 (C) If the homeowner is a Medi-Cal beneficiary, a reverse
22 mortgage may make it difficult to transfer ownership of the home,
23 thus resulting in Medi-Cal recovery.

24 Do you need to discuss this with your counselor? Yes or No

25 (2) The reverse mortgage worksheet guide required in paragraph
26 (1) shall be signed by the agency counselor, if the counseling is
27 done in person, and by the prospective borrower and returned to
28 the lender along with the certification of counseling required under
29 subdivision (k) of Section 1923.2, and the loan application shall
30 not be approved until the signed-checklist reverse mortgage
31 worksheet guide is provided to the lender. A copy of the reverse
32 mortgage worksheet guide shall be provided to the borrower.